

Town of Mashpee

16 Great Neck Road North, Mashpee, MA 02649

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Zoning Board of Appeals Minutes 01/22/2014

MASHPEE ZONING BOARD OF APPEALS JANUARY 22, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, January 22, 2014, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Board Members, William A. Blaisdell, Ronald Bonvie, Richard Jodka, and Associate Members Domingo K. DeBarros and Scott Goldstein were present. Chairman, Jonathan Furbush, and Board Member, James Reiffarth were absent.

Vice Chairman, William Blaisdell announced that the meeting was being televised live on local Mashpee television.

PLEDGE OF ALLEGIANCE

CONTINUED HEARINGS

Robert J. Zammito: Request Appeal of the Building Commissioner's Decision regarding his enforcement jurisdiction on the proposed offshore aquaculture farm on property abutting an R-3 Zoning District at 36 Popponesset Island Road, (Map 106 Parcel 22), Mashpee, MA. Appellants request reversal of the Building Commissioner's Determination and issue a ruling that the proposed aquaculture grant is subject to, and prohibited by, the Town's By-laws. (Continued from January 8, 2014 hearings).

Attorney Wall approached the Board representing the appellants of the petition continued from January 8, 2014 hearings when he gave a full presentation. The Board asked for a continuance to consult with Town Counsel.

Mr. Blaisdell stated he wanted to hear from the audience prior to discussing his opinions.

Attorney John Burke, 14 Crestview Drive, Harwich, MA approached the Board and stated he represents Popponesset Island LLC, and his client's property located at 70 Popponesset Island Road on the easterly side of the Island directly facing west of the proposed Aquaculture Grant. At his client's request, he was asked to give an independent opinion regarding two issues that were not covered in Attorney Wall's presentation. He submitted a letter dated January 22, 2014, and summarized his opinion. He stated one issue is the comprehensiveness of the zoning by-law of the Town whether or not it is comprehensive enough that it covers all of the Town or only part of the Town. The second issue is whether or not the section in the by-law determines district boundaries. He said he spoke to the Building Commissioner to re-confirm his statement that the aquaculture grant was not subject to zoning because the zoning didn't apply below the extreme low-water mark.

He also wanted to confirm that the extreme low-water mark is considered un-zoned. Attorney Burke stated that whether the Town has a comprehensive zoning bylaw or not, any court will determine the intent of the bylaw and usually the intent states that this bylaw is intended to regulate uses, land, all activities, and the keyword is "throughout" the Town of Mashpee, not some of the Town. He questions Sections 174-7 and 174-8 and would like these sections taken into consideration.

Mr. Bonvie was not present at the January 8, 2014 hearings, but did read the minutes so he can sit in on this hearing.

Attorney Wall concluded stating the difference between the last request for the petition and the current request is the issue regarding the use of the boat ramps.

Mr. Blaisdell stated he met with Town Counsel and reviewed the details of Attorney Wall's presentation and discussed his opinion with the other Board members and concluded that nothing has changed since the last request. Mr. Blaisdell voted against the petition, denied, Mr. Bonvie voted against, denied, Mr. Jodka, voted against, denied, Mr. Goldstein, voted against, denied, and Mr. DeBarros, voted against, denied. All denied the request to Appeal the Building Commissioner's Decision regarding his enforcement jurisdiction on the proposed offshore aquaculture farm on property abutting an R-3 Zoning District at 36 Popponesset Island Road, (Map 106 Parcel 22), Mashpee, MA. Appellants request reversal of the Building Commissioner's Determination and issue a ruling that the proposed aquaculture grant is subject to, and prohibited by, the Town's By-laws.

Katharine F. and Brown Lingamfelter: Request a Written Finding under §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for two porches on existing dwelling on property located in an R-3 Zoning District at 65 Seconsett Point Road (Map 124 Parcel 14-0-R) Mashpee, MA. (At the request of the Attorney, continued from December 11, 2013 hearings).

Attorney Wall represents the petitioners and essentially would like the Board's approval of the two porches to an existing non-conforming dwelling. There's an existing structure on the lot and according to the assessing records has been on the lot since approximately 1935 and served by two cesspools. It is on a 1.24 acre lot together with a detached garage. The porches are being proposed on the sides of the structure. The structure is non-conforming because it less than 50 feet back from the wetland resource area of Waquoit Bay. This project has been approved by the DEP who regulates the wetland resource areas. The porches are no closer to the wetlands than the existing structure and therefore the structure is not becoming anymore non-conforming.

The bylaw Section 174-17 does allow for this petition stating that the alteration of a non-conforming structure is not substantially more detrimental than the exiting non-conforming structure. The homes on Seconsett Point Road vary in size from small, modest to large and these porches will be consistent with the size and style of the neighborhood. He submitted some letters from neighbors that support the project and where read aloud for the record.

This project was withdrawn at a prior hearing and one issue that was discussed is a section of the bylaw that states; "if the new construction results in more than 50% of the value of the existing structure, than the entire structure needs to raised up above the base flood level". Mr. Wall submitted an appraisal of the structure, separate from the land and is (Exhibit J) of the proposal. Also, the Board asked for the value of the porches which are slightly less than 50%. Attorney Wall concluded he submitted the requests and asked the Board to grant the relief. Mr. Wall stated there are two different plans, one with the two porches, and one with the boat house.

Mr. Blaisdell made a motion to approve the Lingamfelter's request for a Written Finding under §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for two porches on existing dwelling on property located in an R-3 Zoning District at 65 Seconsett Point Road (Map 124 Parcel 14-0-R) Mashpee, MA. This references a plot plan entitled; Proposed Porches are located further from any wetland resource area than the existing structure", House No. 65 Seconsett Point Rd., Proposed Site Plan located in Mashpee, Mass. prepared for Katharine & Brown Lingamfelter, dated January 17, 2012, Scale: 1' = 20' file: 143MA, Rev. June 8, 2012, Rev. September 20, 2013, Rev. October 20, 2013 remove boat house, title requirements with no additional flow, cottage additions only. Issuing the finding the proposal is not substantially more detrimental than the existing non-conforming structure. The new dwelling will be an improvement, and conform to current building code requirements, is compatible in size and character to other structures in the neighborhood and sufficient parking and setbacks as may be required.

Mr. Bonvie second, yes, Mr. Jodka yes, Mr. Goldstein, yes, Mr. DeBarros, yes. All were in favor.

Katharine F. and Brown Lingamfelter: Request a Variance under §174-31 of the Zoning By-laws to vary the front, rear and side setbacks to allow for construction of a 35 foot by 60 foot boathouse with two bedrooms on property located in an R-3 Zoning District at 65 Seconsett Point Road, (Map 124 Parcel 14-0-R), Mashpee, MA. (At the request of the Attorney, continued from December 11, 2013 hearings).

Attorney Wall stated the Bylaw Section 174-31 refers to accessibility of the road condition for the Fire Department vehicles. This was an issue when addressed last fall and was addressed by proposing to install a sprinkler system into the new building. The Fire Chief submitted a letter stating he was satisfied.

Mr. Blaisdell commented the acting fire chief stated the sprinklers in the dwelling would suppress the fire, however, the conditions of the road would not allow emergency vehicles to gain adequate access to the structure in an emergency situation. Mr. Blaisdell determined that a 2 foot variance is required for the front setback.

Mr. Bonvie has an issue approving two habitable dwellings on one lot. The building inspector will be asked to issue an occupancy permit on this building.

Attorney Wall stated there will not be two primary dwellings, there will be a primary structure and an accessory structure. There is no kitchen facilities in the accessory structure. The road appears to physically exist prior to 1920 and was created by a reservation deeded November 29, 1920 and is Exhibit D in the proposal and considered a "right-of-way".

There were two abutters present. Mr. Stuart McLeod, who resides at 81 Seconsett Point Road who addressed the Board and submitted a letter dated December 9, 2013. He expressed his concerns about the density of the area and the potential increase of vehicles and people. The Board read his letter aloud. Mr. Richard Halpern, of 100 Great Neck Road North addressed the Board and spoke on behalf of his cousin,

Joel Kanter, who resides at 91 & 94 Seconsett Point Road. The Board received Mr. Kanter's letter on December 9, 2013 prior to the hearing date, and were well informed of his concerns and issues regarding the proposal.

Mr. Blaisdell made a motion to approve Katharine F. and Brown Lingamfelter's request for a Variance under § 174-31 of the Zoning By-laws to vary the front, rear and side setbacks to allow for construction of a 35 foot by 60 foot boathouse with two bedrooms on property located in an R-3 Zoning District at 65 Seconsett Point Road, (Map 124 Parcel 14-0-R), Mashpee, MA. . Referencing a proposed site plan prepared by Cape & Island Engineering, located 800 Falmouth Road, Ste. 301C, Mashpee, MA for Kathy and Brown Lingamfelter dated January 17, 2012, file 143MA, Scale: 1'=20', Rev. June 8, 2012, Rev. September 20, 2013. Also septic treatment H600A Hoot System, House No. 65 Seconsett Point Road.

Mr. Bonvie, denied, no, Mr. Blaisdell, approved, yes, Mr. Jodka, approved, yes, Mr. Goldstein, approved, yes, and Mr. DeBarros, approved, yes. A vote of four to one.

Katharine F. and Brown Lingamfelter: Request a Variance under §174-33 of the Zoning By-laws to vary the setback at least fifty (50') feet from any water or wetland as defined by MGL C. 131, §40 for construction of a 35 foot by 60 foot boathouse with two bedrooms on property located in an R-3 Zoning District at 65 Seconsett Point Road, (Map 124 Parcel 14-0-R), Mashpee, MA. (At the request of the Attorney, continued from December 11, 2013 hearings).

Attorney Wall stated the application under section 174-33 relates to the boat house to seek variance relief of the (50) fifty foot setback from the wetlands. The Board is familiar with the circumstances relating to the soil but not effecting the literal enforcement of the bylaw that involves a substantial hardship and desirable relief can be granted without derogation of the public good.

The property is located on a peninsula and is bordered by water on two sides. The westerly side, which is bordered by Waquoit Bay, is protected by a vinyl bulkhead on the armored bank, bordering vegetated wetlands and saltmarsh. The two wetland resources recognized under Chapter 131 Section 40 work together essentially creating a pinching movement such that there is only 1,200 square feet that exists outside the setback areas of this particular location, and only 16 feet wide, hence seeking relief from §174-33 provision.

The hardship is the literal enforcement of the bylaw being enforced from both angles of the (50) foot setback. It is well known that wetlands do consist of a soil condition that is recognized by the courts. Similarly, a hardship can be established if demonstrated due to the soil conditions or topography of the lot, development that is consistent with the bylaw is prohibited, and this structure meets all other requirements, hence the hardship is this structure cannot be built if allowed under this bylaw.

This proposal consists of installing a state-of-the-art Title 5 Septic System thus furthering the public good by addressing one of the primary problems of nitrogen erosion in the ACEC area on Waquoit Bay. The project was approved by DEP and the buildings will be situated close together on the bulkhead side of the armored bank, and not in a sensitive marsh area, therefore relief can be granted.

There were two abutters present. Mr. Stuart McLeod, who resides at 81 Seconsett Point Road addressed the Board and submitted a letter dated December 9, 2013. He expressed his concerns about the density of the area and the potential increase of vehicles and people. The Board read his letter aloud. Mr. Richard Halpern, of 100 Great Neck Road North addressed the Board and spoke on behalf of his cousin, Joel Kanter, who resides at 91 & 94 Seconsett Point Road. The Board received Mr. Kanter's letter on December 9, 2013 prior to the hearing date, and were well informed of his concerns and issues regarding the proposal.

Mr. Blaisdell made a motion to approve Katharine F. and Brown Lingamfelter's request for a Variance under § 174-33 of the Zoning By-laws to vary the setback at least fifty (50') feet from any water or wetland as defined by MGL C. 131, §40 for construction of a 35 foot by 60 foot boathouse with two bedrooms on property located in an R-3 Zoning District at 65 Seconsett Point Road, (Map 124 Parcel 14-0-R), Mashpee, MA. Referencing a proposed site plan prepared by Cape & Island Engineering, located 800 Falmouth Road, Ste. 301C, Mashpee, MA for Kathy and Brown Lingamfelter dated January 17, 2012, file 143MA, Scale: 1'=20', Rev. June 8, 2012, Rev. September 20, 2013. Also septic treatment H600A Hoot System, House No. 65 Seconsett Point Road.

Mr. Bonvie voted against, denied, Mr. Blaisdell, approved, yes, Mr. Jodka, yes, Mr. Goldstein, yes, Mr. DeBarros, yes. A vote of four to one.

Robert and Heather Shanahan: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 72 Spoondrift Way, (Map 112 Parcel 41), Mashpee, MA.

Mr. Blaisdell announced that Associate Member Scott Goldstein excused himself from this petition. He noted that every petitioner is entitled to have five ZBA members for their petition. As with every petition, in order for the petition to pass, there must be four positive votes. When

all five members are sitting in a petition, you can have four positive and one negative vote and the petition will pass. A continuance can be granted if you prefer.

Mr. Tom Bunker, of BSS Design prepared the site plan for the applicants and stated that this project is not in the Popponesset Overlay and therefore does not require ARC approval. The proposal for this raze and replace project conforms to the zoning and setback requirements and therefore no relief requested from the sideline, front yard, lot coverage or height. The reason this project is before the Board is the lot is undersized. The proposed dwelling has a 40 foot front setback, left side is 20.5 feet, and toward the rear of the left side is 15.5 foot setback, and the ride side is 16.5 foot setback. A new septic system will be installed in the front and will be an improvement to the environment. Also included are the architectural plans. The lot coverage is 19.8, the average grade around the perimeter of the proposed house is 14.6, and therefore conforms to the height requirements.

Mr. Bonvie made a motion to approve and issue to Robert and Heather Shanahan a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 72 Spoondrift Way, (Map 112 Parcel 41), Mashpee, MA.

Referencing a plot plan of proposed house and subsurface sewage disposal system upgrade for 72 Spoondrift Way, New Seabury, Mashpee, MA, prepared for Heather & Rob Shanahan, prepared by BSS Design Engineering & Surveying, 164 Katharine Lee Bates Road, Falmouth MA. Scale: 1"= 20', dated November 24, 2013, drawn EJP, TJB, job number 13125, revisions changed house footprint TJB dated December 27, 2013 and wetland offset to closest house corner, TJB dated December 30, 2013, revised pool, patio and house location, TJB dated January 15, 2014. Referencing house plans entitled; The Shanahan Residence 72 Spoondrift Way, New Seabury, MA. Design development 12/26/2013, A-01 through A-08 drawn by John Dvorsack, Architect LLC, 56 Highfield Drive, Falmouth, MA.

Also issuing this finding this project is not substantially more detrimental than the existing, non-conforming structure. The new dwelling will be an improvement and conform to current building code requirements and is compatible in size and character to other structures in the neighborhood and has sufficient parking setbacks as may be required.

Mr. Bonvie, yes, Mr. Blaisdell, second, yes, Mr. Jodka, yes, Mr. DeBarros, yes.

Michael G. Gilmartin: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 5 Cross Street, (Map 123 Parcel 47), Mashpee, MA.

Bert De Martin, Builder approached the Board representing the petitioners of the raze and replace project. He stated the engineer could not attend due to the weather conditions. Mr. De Martin said the proposed project is not in the Popponesset Overlay and he met at the property with Glen Harrington, Health Agent.

Mr. Bonvie read the Board of Health comments; "Housing inspection documented (3) three legal bedrooms draft septic plan reviewed. Architectural plans need revising to depict three bedrooms with no other rooms that can be considered bedrooms."

Also an email from Glen Harrington, "Message sent to architect, Builder and engineer 15 January 2014. On January 14, 2013, Veronica Warden, Assistant Health Agent and I inspected the dwelling at 5 Cross Street for the purposes of determining legal bedrooms. The bedroom on the main floor was not in question but the two upstairs bedrooms were measured for the required habitable space. Both of the upstairs bedrooms had the required 70 square foot minimum of floor area to be considered bedrooms. The dwelling is considered to be a three bedroom dwelling. Please design the architectural plans and Title V design plan accordingly. Thanks, Glen Harrington, Health Agent, Mashpee Board of Health."

Mr. Bonvie made a motion to issue a Written Finding to Michael J. Gilmartin under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a new single family dwelling on property located in an R-3 Zoning District at 5 Cross Street, (Map 123 Parcel 47), Mashpee, MA.

Issuing this finding is contingent upon the following conditions;

- The Building Inspector, to confirm the third floor calculations meet with building code requirements and allow a third floor to be built.
- The applicant must present to the Building Inspector a certified plot plan signed by a registered land surveyor confirming the fact that Cross Street exists minimally to the location of the proposed gravel driveway on this lot.

- Architectural plans need revising to depict three bedrooms with no other rooms that can be considered bedrooms.”

In making this motion, referencing the site plan entitled; Site Plan of 5 Cross Street, Mashpee, MA, prepared for Michael Gilmartin, dated December 9, 2013 by Down Cape Engineering, Inc. Civil Engineers, Land Surveyors, 939 Main St. (Rte. 6A), Yarmouthport, MA, dated December 9, 2013. Also a house plans prepared by James D. Smith, Architect, AIA, 35 Lothrop's Lane, W. Barnstable, MA, job location is Michael Gilmartin, 5 Cross Street, Dated 11/11/2013.

The Board finds the proposal to be not more substantially detrimental than the existing non-conforming structure. The new dwelling will be an improvement and conforms to current building code requirements, is compatible in size and character to other structures in the neighborhood, and has sufficient parking setbacks as may be required.

Mr. Blaisdell, second, yes, Mr. Jodka, yes, Mr. Goldstein, yes, Mr. DeBarros, yes. All were in favor.

Brian J. and Dawn Marie Jadul: Request a Special Permit under §174-25 (I) (9) of the Zoning By-laws and M.G.L. Chapter 131, §40 to allow for construction of an elevated walkway for beach access on property located in an R3 Zoning District at 25 Ocean Bluff Drive, (Map 123 Parcel 205), Mashpee, MA.

Mr. Michael Coutu, Sudbury Design Group, landscape architects, representing the petitioners on this application for a special permit per the requirement of Section 174-25 (I) (9). There's a little confusion of the bylaw and met with the Building Inspector and discussed this project. He read the section of the bylaw stating fixed and floating piers, wharfs, docks, board walks, both seasonal and year round subject to securing of all necessary permits from the Town, State and Federal Government Agencies having jurisdiction over inland and coastal waterways and wetlands, and any dock proposed to extend across a total of more than 75 feet of coastal beach, coastal bank, salt marsh or boarding vegetated wetlands is subject to a special permit.

The discussion with the Building Department determined that this proposal is not a dock, and the bylaw specifically says “any dock”, and does not state the aforementioned. The proposal is a board walk. Mr. Coutu said the project received DEP approval, and Conservation approval as well as ARC approval. The board walk is to provide access from the rear of the property down to the beach. It will provide long term protection for the coastal dune and there will be some mitigated planting within the area approved by Conservation. The staircase winds down and will protect the heavily vegetated area. There was no need for approval by the Harbormaster or Shellfish Warden because it is not a dock.

He commented that ARC approval was required and issued a permit because a plunge pool is being installed and some landscape reconfiguration was performed.

Mr. Bonvie made a motion to issue a special permit to Brian J. and Dawn Marie Jadul: under §174-25 (I) (9) of the Zoning By-laws and M.G.L. Chapter 131, §40 to allow for construction of an elevated walkway for beach access on property located in an R3 Zoning District at 25 Ocean Bluff Drive, (Map 123 Parcel 205), Mashpee, MA.

The plot plan entitled; Plot Plan for #25 Ocean Bluff Drive, prepared for Sudbury Design Group in Mashpee, Plant dated: November 7, 2013, plan scale: 1”= 20’, by Falmouth Engineering, 29 Simpson Lane Unit 1, Falmouth, MA, project number: 13125, Cad file name: 13125SP, Drawn by: L.M. sheet 1 of 1, Also a plan entitled; Existing Conditions Plan for Jadul Residence, 25 Ocean Bluff Drive, New Seabury, Mashpee, MA, prepared by Sudbury Design Group, 740 Boston Post Road, Sudbury, MA, Scale: 1” = 10'-0”, dated October 3, 2013, drawn by: RMM, Checked by: MJC, L 1.0 through 1.3.

Mr. Blaisdell second, yes, Mr. Jodka, yes, Mr. Goldstein, yes, Mr. DeBarros, yes. All were in favor.

Mr. Blaisdell made a motion to approve the January 8, 2014 meeting minutes. Mr. Jodka, second, yes, Mr. Goldstein, yes, Mr. DeBarros, yes. All were in favor.

Mr. Blaisdell made a motion to adjourn, Mr. Bonvie, yes, Mr. Jodka, yes, Mr. Goldstein, yes, and Mr. DeBarros, yes. All were in favor.

Respectfully submitted,

Mary Ann Romero

Administrative Secretary
Zoning Board of Appeals